

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: March 19, 2013

To: The Commission
(Meeting of March 21, 2013)

From: Lynn Sadler, Director
Office of Governmental Affairs (OGA) – Sacramento

Subject: **AB 687 (Hernandez) – Electricity.**
As introduced: February 21, 2013

RECOMMENDED POSITION: NEUTRAL

SUMMARY OF BILL

This bill would require the CPUC to ensure that entities treating and remediating groundwater that a federal, state, or local agency identifies as contaminated on a site listed as a Superfund site by the United States Environmental Protection Agency have the highest priority for acquiring direct access service. The Commission would have to allow such entities to take the limited available direct access service ahead of other customers whose order was determined by a random lottery.

CURRENT LAW

- Public Utilities Code Section 365 requires the CPUC to authorize direct transactions between electricity suppliers and end-use customers (Section 365(b)(1)).
- Section 365.1(a), enacted in 2009, changed the prior suspension of direct access service to allow some additional direct access load; in other respects the right to acquire direct access service remains suspended until the legislature lifts the suspension.
- Section 366.2.b provides that individual retail nonresidential end-use customers may take electric service from direct access providers in each utility territory where direct access operates, up to the historical maximum direct access load by utility territory.

AUTHOR'S PURPOSE

While no problem is stated, the implied problem is that customers that want to take direct access service are prevented from doing so by the limitations established by law.

Only the Legislature can allow additional direct access load. This bill does not resolve the limitations issue except for the named group of entities in the event some of the load currently on direct access service returns to utility bundled service.

DIVISION ANALYSIS

This bill, if adopted, would require the CPUC to direct the utilities to modify their tariffs to provide certain specified class of customers with the highest priority for direct access service. The bill would require the utilities to allow such entities to take the limited available DA service ahead of other customers who are on existing priority list that was determined by lottery. In practice, this bill would require an additional step for utilities to identify applicable entities and allow them the required priority.

SAFETY IMPACT

The bill, which prioritizes one group over all others for acquiring direct access service, would neither reduce nor enhance the safety of California citizens. If the favored group of entities - entities treating and remediating groundwater that a federal, state, or local agency identifies as contaminated on a site listed as a Superfund site by the United States Environmental Protection Agency – were, pursuant to the bill, able to obtain preferential access to direct access service, and were able to obtain lower rates from direct access providers, the entities might have more funds available for expenditures relating to safety. However, the bill includes no requirement that the favored entities use any funds saved through direct access service for activities relating to treating or remediating contaminated groundwater, or for other safety-related activities.

RELIABILITY IMPACT

The bill, which prioritizes one group over all others for acquiring direct access service, would neither reduce nor enhance reliability of service.

RATEPAYER IMPACT

The bill, which prioritizes one group over all others for acquiring direct access service, might allow this group to obtain lower rates from its direct access provider; it would not require an increase in rates charged to other customers. However, if the favored group of customers is able to obtain lower rates from a direct access provider, then other customers on existing direct access priority lists who are displaced by the customers given priority as a result of the bill will not get the potentially lower rates they might otherwise obtain through direct access service.

FISCAL IMPACT

The bill does not require an appreciable expansion of CPUC workload; nor does it require the CPUC to write a new report or to include new information in an existing report. The CPUC would, however, be required to review utility tariff filings needed to

comply with the direct access service priority changes mandated by the bill. The fiscal impact of this requirement is uncertain.

ECONOMIC IMPACT

The bill, which prioritizes one group over all others for acquiring direct access service, might allow this group to obtain lower rates from a direct access provider. However, this is uncertain. The overall net economic impact for customers as a whole may be neutral, since the bill does not expand direct access service availability but merely sets different priorities regarding available direct access service. The net impact on utilities and the CPUC would be somewhat negative, since there would be some costs associated with the revision and review of new tariffs necessitated by the bill's requirement for an alteration of the current direct access priority system

LEGAL IMPACT

AB 1890 (1996) added to the Public Utilities Code a number of provisions regarding restructuring of the electric industry, including Section 365, which requires the CPUC to authorize direct transactions between electricity suppliers and end use customers (Section 365(b)(1)). SB 695 (2009) added Section 365.1, which provided that, with certain exceptions, the right of retail end-use customers to acquire service from other providers is suspended until the Legislature, by statute, lifts the suspension or otherwise authorizes direct transactions (Section 365.1(a)). Section 365.1(b) requires the CPUC to allow individual non-residential end-use customers to acquire electric service from other providers in each electrical corporation's distribution service territory up to a maximum allowable total limit. AB 687 would amend Section 365.1 to require the CPUC to ensure that entities that are currently treating and remediating groundwater that a federal, state, or local agency has previously identified as contaminated at a site listed by the US EPA on the National Priorities List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (a Superfund site) have the highest priority in acquiring electric service by direct transactions.

LEGISLATIVE HISTORY

None.

PROGRAM BACKGROUND

- SB 695 added Section 365.1(b) to the Public Utilities Code, enacting changes to allow limited growth in direct access service.
- Decision (D.) 10-03-022 implemented measures to begin processing the new enrollments of direct access load effective April 11, 2010. Customers were allowed to switch to direct access service on a first-come-first-served basis.

- The allowable direct access load was phased in over the 4 years, 2010 through 2013. Any additional availability of direct access will involve customers on direct access as of 2013 returning to bundled utility service.
- Pursuant to D.12-12-026, an enrollment period will open annually to allow customers that want to take direct access service to submit a 6-month notice to their utility to switch to direct access.
- In D.12-12-026, the Commission also changed the previously-adopted first-come-first-served direct access enrollment procedure to a lottery process.
- The utilities accept 6-month notices from customers to switch to direct access service and determine which notices can be accepted based on the direct access load limitations established by SB 695.
- The Commission's Energy Division receives monthly reports from the utilities on the amount of load on direct access service. Energy Division staff aggregates this information and posts a summary on the Commission's web page. Energy Division also produces an annual report on the direct access enrollment process. Specific customer information is confidential, and the Energy Division does not receive such information.
- AB 687 would require substantial changes to existing direct access service programs, since it requires the CPUC to ensure that a specific class of potential direct access service customers has priority over other direct access service customers.

OTHER STATES' INFORMATION

Unknown.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION

None.

SUMMARY OF SUGGESTED AMENDMENTS

None.

STATUS

AB 687 is pending hearing in the Assembly Utilities and Commerce Committee.

SUPPORT/OPPOSITION

None on file.

VOTES

Not applicable.

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BILL LANGUAGE

BILL NUMBER: AB 687 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Roger Hernández

FEBRUARY 21, 2013

An act to amend Section 365.1 of the Public Utilities Code,
relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 687, as introduced, Roger Hernández. Electricity.

The Public Utilities Act requires the Public Utilities Commission, pursuant to electrical restructuring, to authorize and facilitate direct transactions between electricity suppliers and retail end-use customers. However, other existing law suspends the right of retail end-use customers other than community choice aggregators, as defined, to acquire service from certain electricity suppliers, after a period of time to be determined by the commission, until the Department of Water Resources no longer supplies electricity under that law. The act requires the commission to allow individual retail nonresidential end-use customers to acquire electric service from other providers in each electrical corporation's distribution service territory up to a specified maximum allowable total kilowatthours annual limit. The act requires the commission to undertake specified actions when authorizing additional direct transactions for retail nonresidential end-use customers.

This bill would additionally require the commission to provide the highest priority to acquire electric services from other providers to entities treating and remediating groundwater that a federal, state, or local agency identifies as contaminated on a site listed as a Superfund site by the United States Environmental Protection Agency when authorizing additional direct transactions for retail nonresidential end-use customers.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 365.1 of the Public Utilities Code is amended to read:

365.1. (a) Except as expressly authorized by this section, and subject to the limitations in subdivisions (b) and (c), the right of retail end-use customers pursuant to this chapter to acquire service from other providers is suspended until the Legislature, by statute, lifts the suspension or otherwise authorizes direct transactions. For purposes of this section, "other provider" means any person, corporation, or other entity that is authorized to provide electric

service within the service territory of an electrical corporation pursuant to this chapter, and includes an aggregator, broker, or marketer, as defined in Section 331, and an electric service provider, as defined in Section 218.3. "Other provider" does not include a community choice aggregator, as defined in Section 331.1, and the limitations in this section do not apply to the sale of electricity by "other providers" to a community choice aggregator for resale to community choice aggregation electricity consumers pursuant to Section 366.2.

(b) The commission shall allow individual retail nonresidential end-use customers to acquire electric service from other providers in each electrical corporation's distribution service territory, up to a maximum allowable total kilowatthours annual limit. The maximum allowable annual limit shall be established by the commission for each electrical corporation at the maximum total kilowatthours supplied by all other providers to distribution customers of that electrical corporation during any sequential 12-month period between April 1, 1998, and the effective date of this section. Within six months of the effective date of this section, or by July 1, 2010, whichever is sooner, the commission shall adopt and implement a reopening schedule that commences immediately and will phase in the allowable amount of increased kilowatthours over a period of not less than three years, and not more than five years, raising the allowable limit of kilowatthours supplied by other providers in each electrical corporation's distribution service territory from the number of kilowatthours provided by other providers as of the effective date of this section, to the maximum allowable annual limit for that electrical corporation's distribution service territory. The commission shall review and, if appropriate, modify its currently effective rules governing direct transactions, but that review shall not delay the start of the phase-in schedule.

(c) Once the commission has authorized additional direct transactions pursuant to subdivision (b), it shall do ~~both~~ all of the following:

(1) Ensure that other providers are subject to the same requirements that are applicable to the state's three largest electrical corporations under any programs or rules adopted by the commission to implement the resource adequacy provisions of Section 380, the renewables portfolio standard provisions of Article 16 (commencing with Section 399.11), and the requirements for the electricity sector adopted by the State Air Resources Board pursuant to the California Global Warming Solutions Act of 2006 (Division 25.5 (commencing with Section 38500) of the Health and Safety Code). This requirement applies notwithstanding any prior decision of the commission to the contrary.

(2) (A) Ensure that, in the event that the commission authorizes, in the situation of a contract with a third party, or orders, in the situation of utility-owned generation, an electrical corporation to obtain generation resources that the commission determines are needed to meet system or local area reliability needs for the benefit of all customers in the electrical corporation's distribution service territory, the net capacity costs of those generation resources are allocated on a fully nonbypassable basis consistent with departing load provisions as determined by the commission, to all of the following:

(i) Bundled service customers of the electrical corporation.

(ii) Customers that purchase electricity through a direct transaction with other providers.

(iii) Customers of community choice aggregators.

(B) If the commission authorizes or orders an electrical corporation to obtain generation resources pursuant to subparagraph (A), the commission shall ensure that those resources meet a system or local reliability need in a manner that benefits all customers of the electrical corporation. The commission shall allocate the costs of those generation resources to ratepayers in a manner that is fair and equitable to all customers, whether they receive electric service from the electrical corporation, a community choice aggregator, or an electric service provider.

(C) The resource adequacy benefits of generation resources acquired by an electrical corporation pursuant to subparagraph (A) shall be allocated to all customers who pay their net capacity costs. Net capacity costs shall be determined by subtracting the energy and ancillary services value of the resource from the total costs paid by the electrical corporation pursuant to a contract with a third party or the annual revenue requirement for the resource if the electrical corporation directly owns the resource. An energy auction shall not be required as a condition for applying this allocation, but may be allowed as a means to establish the energy and ancillary services value of the resource for purposes of determining the net costs of capacity to be recovered from customers pursuant to this paragraph, and the allocation of the net capacity costs of contracts with third parties shall be allowed for the terms of those contracts.

(D) It is the intent of the Legislature, in enacting this paragraph, to provide additional guidance to the commission with respect to the implementation of subdivision (g) of Section 380, as well as to ensure that the customers to whom the net costs and benefits of capacity are allocated are not required to pay for the cost of electricity they do not consume.

(3) Ensure that entities that are currently treating and remediating groundwater that federal, state, or local agency previously identified as contaminated at a site that is listed by the United States Environmental Protection Agency on the National Priorities List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.) have the highest priority in acquiring electric service by direct transactions.

(d) (1) If the commission approves a centralized resource adequacy mechanism pursuant to subdivisions (h) and (i) of Section 380, upon the implementation of the centralized resource adequacy mechanism the requirements of paragraph (2) of subdivision (c) shall be suspended. If the commission later orders that electrical corporations cease procuring capacity through a centralized resource adequacy mechanism, the requirements of paragraph (2) of subdivision (c) shall again apply.

(2) If the use of a centralized resource adequacy mechanism is authorized by the commission and has been implemented as set forth in paragraph (1), the net capacity costs of generation resources that the commission determines are required to meet urgent system or urgent local grid reliability needs, and that the commission authorizes to be procured outside of the Section 380 or Section 454.5 processes, shall be recovered according to the provisions of

paragraph (2) of subdivision (c).

(3) ~~Nothing in this~~ *This* subdivision
~~supplants~~ *does not supplant* the
resource adequacy requirements of Section 380 or the resource
procurement procedures established in Section 454.5.

(e) The commission may report to the Legislature on the efficacy
of authorizing individual retail end-use residential customers to
enter into direct transactions, including appropriate consumer
protections.